

SENATE BILL 504  
By Kilby

AN ACT to amend Tennessee Code Annotated, Title 39,  
Chapter 13, Part 1; Title 39, Chapter 13, Part 5;  
Title 39, Chapter 15, Part 4 and Title 39, Chapter  
17, Part 10, relative to offenses involving children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-13-101, is amended by deleting the section in its entirety and substituting instead the following:

**§ 39-13-101.**

(a) A person commits assault who:

(1) Intentionally, knowingly or recklessly causes bodily injury to another;

(2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury; or

(3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.

(b)

(1) Assault is a Class A misdemeanor unless the offense is committed under subdivision (a)(3), in which event assault is a Class B misdemeanor, unless the victim is less than thirteen (13) years of age in which case the assault is a Class E felony.

(2) In addition to any other punishment that may be imposed for a violation of this section, if the relationship between the defendant and the victim of the assault is such that the victim is a victim as defined in § 36-3-601(8), and if, as determined by the court, the defendant possesses the ability to pay a fine in

an amount not in excess of two hundred dollars (\$200), then the court shall impose a fine at the level of the defendant's ability to pay, but not in excess of two hundred dollars (\$200). Such additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the same to the general fund. All such fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding family violence shelters and shelter services. Such appropriation shall be in addition to any amount appropriated pursuant to § 67-4-411.

SECTION 2. Tennessee Code Annotated, Section 39-13-506, is amended by deleting the section in its entirety and substituting instead the following:

**§ 39-13-506.**

(a) Statutory rape is sexual penetration of a victim by the defendant or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least four (4) years older than the victim.

(b) If the person accused of statutory rape is under eighteen (18) years of age, such a defendant shall be tried as a juvenile and shall not be transferred for trial as an adult.

(c) Statutory rape is a Class D felony provided that if the victim suffers an injury, becomes pregnant or contracts a sexually transmitted disease as a result of the statutory rape, or where the defendant has a prior felony conviction for any sex offense, statutory rape is a Class C felony.

SECTION 3. Tennessee Code Annotated, Section 39-13-528, is amended by deleting the section in its entirety and substituting instead the following:

**§ 39-13-528.**

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request or hire a person who the person making the solicitation knows or should know is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor and who the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that if completed would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- (1) Rape of a child pursuant to § 39-13-522;
- (2) Aggravated rape pursuant to § 39-13-502;
- (3) Rape pursuant to § 39-13-503;
- (4) Aggravated sexual battery pursuant to § 39-13-504;
- (5) Sexual battery by an authority figure pursuant to section 39-13-527;
- (6) Sexual battery pursuant to § 39-13-505;
- (7) Statutory rape pursuant to § 39-13-506; and
- (8) Especially aggravated sexual exploitation of a minor pursuant to § 39-17-1005.

(b) It is no defense that the solicitation was unsuccessful and the conduct solicited was not engaged in. It is no defense that if the solicited conduct were engaged in the minor would not commit any of the listed offenses. It is no defense that the minor solicited was unaware of the criminal nature of the conduct solicited.

(c) A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited unless the offense solicited was a Class E felony in which case the offense shall be a Class A misdemeanor.

SECTION 4. Tennessee Code Annotated, Title 39, Chapter 13, Part 5, is amended by adding the following as a new section:

**§ 39-13-529.**

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet service including webcam communications, directly or through another, to intentionally command, request or cause a minor to engage in sexual activity or simulated sexual activity that is patently offensive as defined in section 39-17-1002, where such sexual activity or simulated sexual activity is observed by that person or by another.

(b) A violation of this section is a Class D felony provided that if the minor is less than thirteen (13) years of age the violation is a Class C felony.

(c) It is an offense for any person eighteen (18) years of age or older to intentionally:

(1) Engage in sexual activity, or simulated sexual activity that is patently offensive, as defined in section 39-17-1002, for the purpose of having the minor view such sexual activity or simulated sexual activity, including circumstances where the minor is in the presence of such person or where the minor views such activity via electronic communication including electronic mail, internet service and webcam communications.

(2) Display to a minor or expose a minor to any material containing sexual activity or simulated sexual activity as those terms are defined in section 39-17-1002, where the purpose of such display can reasonably be construed as being for the sexual arousal or gratification of the minor or the person displaying the material.

(d) A violation of this section is a Class E felony provided that if the minor is less than thirteen (13) years of age the violation is a Class D felony.

(e) The statute of limitations for these offenses shall be the applicable statute for the class of the offense or until the child reaches the age of eighteen (18), whichever is greater.

SECTION 5. Tennessee Code Annotated, Section 39-15-401, is amended by deleting the section in its entirety and substituting instead the following:

**§ 39-15-401.**

(a) Any person who knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury commits a Class A misdemeanor; provided, however, that if the abused child is six (6) years of age or less, the penalty is a Class D felony.

(b) Any person who knowingly neglects or endangers the health and welfare of a child under eighteen (18) years of age commits a Class A misdemeanor; provided that if the neglected child is six (6) years of age or less, the penalty is a Class D felony. The child need not suffer an actual injury or an adverse affect to his health and welfare for the child to be neglected or endangered.

(c)

(1) Any juvenile court having reasonable cause to believe that a person is guilty of violating this section shall have the person brought before the court either by summons or warrant. No arrest warrant or summons shall be issued by any person authorized to issue such a warrant or summons nor shall criminal charges be instituted against a child's parent, guardian or custodian for a violation of subsection (a) based upon the allegation that unreasonable corporal punishment was administered to such child unless the affidavit of complaint also

contains a copy of the report prepared by the law enforcement official who investigated the allegation or independent medical verification of injury to the child.

(2)

(A) If the person pleads not guilty, the juvenile judge shall have the power of a judge of the court of general sessions to bind the person over to the grand jury as in cases of misdemeanors under the criminal laws of this state. Upon being bound over to the grand jury, the person may be prosecuted on an indictment filed by the district attorney general and a prosecutor need not be named on the indictment.

(B) On a plea of not guilty, the juvenile court judge shall have the power to proceed to hear a case on its merits without the intervention of a jury if the person requests a hearing in juvenile court and expressly waives, in writing, indictment, presentment, grand jury investigation and jury trial.

(C) If the person enters a plea of guilty, the juvenile court judge shall sentence the person under this section.

(d) Except as expressly provided, the provisions of this section shall not be construed as repealing any provision of any other statute, but shall be supplementary thereto and cumulative thereof.

(e) A violation of this section may be a lesser included offense of any kind of homicide, statutory assault, or sexual offense if the victim is a child and the evidence supports a charge under this section. In any case in which conduct violating this section also constitutes assault, the conduct may be prosecuted under this section or under § 39-13-101 or § 39-13-102 or both.

SECTION 6. Tennessee Code Annotated, Section 39-15-402, is amended by deleting the section in its entirety and substituting instead the following:

**§ 39-15-402.**

(a) A person commits the offense of aggravated child abuse or aggravated child neglect or endangerment who commits the offense of child abuse as defined in §39-15-401(a), or who commits the offense of child neglect or endangerment as defined in § 39-15-401(b) and:

(1) The act of abuse or neglect results in serious bodily injury to the child;

or

(2) The act of neglect or endangerment results in serious bodily injury to the child; or

(3) A deadly weapon, dangerous instrumentality or controlled substance is used to accomplish the act of abuse, neglect or endangerment; or

(4) The act of abuse, neglect or endangerment was especially heinous, atrocious or cruel, or involved the infliction of torture to the victim.

(b) A violation of this section is a Class B felony; provided, however, that, if the abused, neglected or endangered child is eight (8) years of age or less, or is vulnerable because the victim is mentally defective, mentally incapacitated or suffers from a physical disability, the penalty is a Class A felony.

(c) Nothing in this chapter shall be construed to mean a child is abused, neglected, or endangered, or abused, neglected or endangered in an aggravated manner for the sole reason the child is being provided treatment by spiritual means through prayer alone in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical or surgical treatment.

SECTION 7. Tennessee Code Annotated, Title 39, Chapter 15, Part 4, is amended by adding the following as a new section:

**§ 39-15-414.**

(a) It is an offense for any person eighteen (18) years of age or older to intentionally, knowingly or recklessly commit or attempt to commit any of the following criminal acts against a “family or household member” or against a child of such “family or household member” as that term is defined in section 39-13-111, where such criminal act is committed or attempted in the presence of a minor under the age of eighteen (18) years of age such that the minor is exposed to the conduct of:

- (1) First degree murder pursuant to § 39-13-202;
- (2) Second degree murder pursuant to § 39-13-210;
- (3) Voluntary manslaughter pursuant to § 39-13-211;
- (4) Criminally negligent homicide pursuant to § 39-13-212;
- (5) Reckless homicide pursuant to § 39-13-215;
- (6) Assault pursuant to § 39-13-101;
- (7) Domestic assault pursuant to § 39-13-111;
- (8) Aggravated assault pursuant to § 39-13-102;
- (9) Reckless endangerment pursuant to § 39-13-103;
- (10) Any form of false imprisonment or kidnapping pursuant to Tennessee Code Annotated, Title 39, Chapter 13, Part 3;
- (11) Any form of sexual offense pursuant to §§ 39-13-502 to 39-13-507;
- (12) Rape of a child pursuant to § 39-13-522;
- (13) Sexual battery by an authority figure pursuant to § 39-13-527 and incest pursuant to § 39-15-302;
- (14) Cruelty to animals pursuant to § 39-14-202;



(15) Arson pursuant to §§ 39-14-301 to 39-14-303;

(16) Burglary pursuant to §§ 39-14-401 to 39-14-404 and aggravated criminal trespass pursuant to §39-14-406;

(17) Child abuse and child neglect or endangerment pursuant to § 39-15-401 and aggravated child abuse and child neglect or endangerment pursuant to § 39-15-402; or

(18) Stalking pursuant to §39-17-315.

(b) A separate offense shall apply to every minor exposed to the act of violence, but in no circumstance may an offense under this section be alleged where the minor is the victim of the crime or attempted crime under subsection (a).

(c) “In the presence of a minor” means in the child’s direct physical presence or under circumstances where the child is likely to see or hear the crime or attempted crime and the defendant is aware of this likelihood.

(d) Conviction under this section shall not require proof of any actual harm to the child or expert testimony on the likelihood of harm to the child from exposure to the act of violence.

(e) A person need not be charged with or convicted of the offense(s) specified under subsection (a) in order for a person to be charged with or convicted of an offense under this section.

(f) An offense under this section shall be classified according to the severity of the class of offense committed or attempted to be committed in the child’s presence except that a criminal homicide pursuant to section 39-13-202 committed in the child’s presence shall be classified as a Class A felony under this section. A second conviction under this section shall be punished at the next highest offense classification but in no event shall that classification exceed an A felony.

SECTION 8. Tennessee Code Annotated, Section 39-17-1003, is amended by deleting the section in its entirety and substituting instead the following:

**§ 39-17-1003.**

(a) It is unlawful for any person to knowingly possess material that includes a minor engaged in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) A person possessing material that violates subsection (a) above may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation; or where the number of materials possessed is greater than fifty (50) then the person may be charged in a single count to enhance the class of offense under subsection (d).

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, internet history and any other relevant evidence in determining whether a person knowingly possessed the material or in determining whether the material or image otherwise represents or depicts the participant as a minor.

(d) A violation of this section is a Class D felony; however if the number of individual images, materials or combination thereof which are possessed is more than fifty (50) then the offense is a Class C felony and if the number of individual images, materials or combination thereof exceeds one hundred (100), the offense is a Class B felony.

SECTION 9. Tennessee Code Annotated, Section 39-17-1004, is amended by deleting the section in its entirety and substituting instead the following:

**§ 39-17-1004.**

(a)

(1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, which includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subsection (a)(1) above may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation; or where the number of materials involved in a violation under subsection (a)(1) is greater than twenty-five (25) then the person may be charged in a single count to enhance the class of offense under subdivision (4).

(3) In a prosecution under this subsection (a), the trier of fact may consider the title, text, visual representation, internet history and any other relevant evidence in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes or in determining whether the material or image otherwise represents or depicts the participant as a minor.

(4) A violation of this subsection is a Class C felony; however if the number of individual images, materials or combination thereof which are promoted, sold, distributed, transported, purchased, exchanged or possessed with intent to promote, sell, distribute, transport, purchase or exchange is more than twenty-five (25) then the offense is a Class B felony.

(b)

(1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material which is obscene, as defined in § 39-17-901(10), or

possess with the intent to promote, sell, distribute, transport, purchase or exchange such material, which includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subsection (b)(1) above may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation; or where the number of materials involved in a violation under subsection (b)(1) is greater than twenty-five (25) then the person may be charged in a single count to enhance the class of offense under subdivision (4).

(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, internet history and any other relevant evidence in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes or in determining whether the material or image otherwise represents or depicts the participant as a minor.

(4) A violation of this subsection (b) is a Class C felony; however if the number of individuals images, materials or combination thereof which are promoted, sold, distributed, transported, purchased, exchanged or possessed with intent to promote, sell, distribute, transport, purchase or exchange is more than twenty-five (25) then the offense is a Class B felony.

SECTION 10. Tennessee Code Annotated, Section 39-17-1005, is amended by deleting the section in its entirety and substituting instead the following:

**§ 39-17-1005.**

(a) It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance or in the production of material which includes the minor engaging in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) A person possessing material that violates subsection (a) above may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation.

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, internet history and any other relevant evidence in determining whether a person knowingly possessed the material or in determining whether the material or image otherwise represents or depicts the participant as a minor.

(d) A violation of this section is a Class B felony. Nothing in this section shall be construed as limiting prosecution under § 39-13-502, for aggravated rape or § 39-13-504, for aggravated sexual battery, or for any other sexual offense under this chapter, nor shall a joint conviction under this section and any other related sexual offense, even if arising out of the same conduct, be construed as limiting any applicable punishment including consecutive sentencing under § 40-35-115.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect July 1, 2005, the public welfare requiring it.